

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,584
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her Food Stamp benefits until she cooperates with work requirements. The petitioner subsequently did cooperate with work requirements and is now receiving benefits. The issue is whether she should have received Food Stamps based on an application made July 2, 1998.

FINDINGS OF FACT

1. The petitioner first began receiving Food Stamp benefits February 1, 1997, and was required as a forty-two year old, able-bodied adult without dependents to participate in work activities to continue to receive benefits. On January 7, 1998, the petitioner was mailed a notice telling her that her Food Stamps would be closed on February 1, 1998, due to her failure to comply with a job search requirement, a problem which had begun back in November of 1997, and which could not be resolved. The notice told the petitioner that she had a right to appeal this decision. She was further notified in a memo from her worker dated February 11, 1998, that she would be sanctioned from receiving benefits for one month and that in addition,

she was required to co-operate with the job search requirement or prove that she was exempt to regain benefits in March.

2. Although the petitioner did not agree with that closure, she did not appeal the decision of non-cooperation and termination because she was about to begin training as a commission salesperson and did not think she would need Food Stamps in the future. The petitioner did become a commission salesperson and continued to work for that employer over a number of months.

3. On July 2, 1998, the petitioner reapplied for Food Stamps. On her application she stated that she had left her job on June 1, 1998, because she wasn't making any money. She was interviewed at that time and told that she needed to complete a thirty-day period of cooperation with the job search program before she could regain eligibility for Food Stamps unless she could demonstrate that she was exempt from the program. She was told that the way she could become exempt from this requirement was to demonstrate that she had worked a significant number of hours in the last thirty days. The petitioner replied that she had done a significant amount of work in the 30 days prior to her application, and the worker asked her to bring in verification from her employer of the hours she had worked and wages earned during the last month. That verification request was also given to the petitioner in writing with a

deadline for return of ten days. In order to expedite her receipt of Food Stamps, the worker set up an appointment for the petitioner at the job program office for July 16, 1998, in case she could not prove an exemption. She explained to the petitioner that she should plan to attend this appointment unless she was found to be exempt.

4. The petitioner did not provide the requested verification by the required date. The worker then sent the petitioner a letter stating that she was being denied Food Stamps based on her failure to meet work requirements and that she would continue to be denied until she either complied with the work program, proved that she should be excepted from the work program or until June 1, 2000, whichever came first.¹

5. After receiving this notice, the petitioner wrote a letter to her worker on July 17, 1998, stating that she wanted to appeal. The basis for her appeal was the initial sanction placed on her in January of 1998 which she felt was unfair. Her letter indicated that she could not remember when her job registration appointment was (she had already missed it) and that she was unsure as to whether she should still bring in her pay stubs. In response to this request,

¹ The petitioner was also notified that she had received Food Stamps for more than three months during the last thirty-six without meeting the work requirements, another factor which required her to participate in work requirements. This fact has not been contested by the petitioner.

the petitioner was told by the worker to fill out a new application which she would review.

6. The petitioner appeared at her hearing on September 10, 1998, and indicated that she had not gone to the July 16, 1998, interview because she was confused about whether she should go after she got the closure letter of July 13. However, she had not called her worker to ask for clarification before the time scheduled for the meeting. Although she had filled out a new application on August 8, 1998, pursuant to the worker's suggestion, she had yet to submit that application. The Department argued that the petitioner was out of time to appeal the January 7 disqualification but agreed to look at the petitioner's pay stubs to see if it appeared that the sanction should be removed or that she should be exempt from the work requirements. The hearing was adjourned in order for the petitioner to present pay stubs showing her weekly hours and earnings during the February 1 through July 2, 1998 period. That same day, the petitioner filed her new application and new appointments were set up for her work program registration.

7. The matter was reset for hearing on October 8, 1998. At that time, the petitioner was granted another continuance in order to obtain an attorney and gather her pay information. The hearing was reset for November 5, 1998, at which time the petitioner failed to show up. In

response to an inquiry from the Board, the petitioner wrote that she had been home with the flu and had left a message on her worker's voice mail to that effect prior to the hearing. Based on this representation, the matter was reset for December 3, 1998. On that date, the petitioner failed to attend again. In response to another inquiry from the Board, the petitioner said that her car had broken down on the way to the hearing and that she had left a message with her worker and a switchboard receptionist. She said that she was awaiting paperwork and trying to get a legal aid attorney and wanted the matter reset. The matter was reset for January 7, 1998, but reset for February 4, 1999, due to a change of address for the petitioner. The petitioner notified the Board by letter before that date that she would be out of town on a medical emergency and asked for another hearing date in March. The matter was reset for March 5, 1999 at which time the petitioner failed to show again. In response to the Board's inquiry the petitioner said that she had been caring for a sick relative out of state on that date and that she had finally gotten proof of her employment and wanted the Department to review the information. Attached to this letter was a W-2 form.

8. Because new information had been provided, the matter was set one last time on April 29, 1999. At that time the petitioner did appear and further evidence was taken on the matter. The petitioner presented a copy of her

W-2 form which she had obtained from her employer showing that she made \$3,268.18 during the year of 1998. The Department took the position that the form was not adequate to show the hours and wages worked on a weekly or even monthly basis and that no conclusion could be drawn on whether she might be eligible for an exemption. The petitioner gave a vague explanation for this failure saying that she had been having trouble getting that information from her employer because someone had left the company who used to be her boss although the company apparently still exists. She was advised that she had to get the weekly pay information and was given another month to do so. By June 1, 1999, she still had not provided the information which had first been requested over ten months earlier.

9. The petitioner was finally found by the Department to have removed her disqualification in November of 1998, and got Food Stamps covering that month on November 21. Documents provided by the Department indicate that the removal of the disqualification did not go smoothly but the petitioner did not appeal any of the Department's specific determinations which were adverse to her. The sole issue in this appeal remains whether the Department was correct in its July 13, 1998, determination that the petitioner was ineligible for Food Stamps until she cooperated with work program requirements or proved that she was exempt from them.

ORDER

The decision of the Department is affirmed.

REASONS

It is not possible at this time for the Board to look at the correctness of the sanction placed on the petitioner on January 7, 1998. Under the Board's rules, an appeal of a Food Stamp decision must be made within 90 days of the date the grievance arose. Fair Hearing Rule No 1. In this case, the appeal was timely only if it was filed by April 7, 1998.

The appeal was not filed until July 17, 1998, when the petitioner felt the impact of the sanction when she reapplied. As the Department clearly notified the petitioner on both January 7 and February 11² as to the actions to be taken against her and advised her of her appeal rights at that time, it cannot be found that the Department took any action which should stay the operation of this rule. Neither has the petitioner shown that she was under any kind of a disability which might have stopped the appeal time from running against her. By her own admission, she knew she could appeal but decided not to do so because she did not need the Food Stamps at that time.

² An argument might be made that the petitioner did not know the full extent of the Department's actions until the February 11, 1998 memorandum was sent to her. In that case, she would have had another thirty-five days to file an appeal or until May 12, 1998, to file her appeal.

As the Board has no power to remove the underlying January 1998 sanction at this time, the sole issue for purposes of this hearing is whether the Department was correct in its determination that the petitioner's status required a denial of Food Stamp benefits until certain work program requirements were met and that the petitioner was not exempt from these requirements.

The Food Stamp regulations set forth, in pertinent part, the following work requirements for "able-bodied adults without dependents":

1. To be eligible for food stamps, an individual must meet at least one of the following three criteria:
 - a. He/she must meet the work, work program or workfare requirement defined in paragraph 3 below.
 - b. He/she must meet one of the exemption criteria in paragraph 2 below.
 - c. He/she must have received food stamps in fewer than 3 of the preceding 36 months during which he or she did not also meet the work program, or workfare requirement defined in paragraph 3 below, excluding any months in which the individual was exempt according to paragraph 2 below.
2. An individual is exempt from this work requirement if he or she is:
 - a. under 18 or over 50 years of age.
 - b. medically certified as physically or mentally unfit for employment. . . .
 - c. responsible for a dependent child.
 - d. otherwise exempt according to a provision at 273.7b [regarding caring for an incapacitated person.]

- e. pregnant, or
 - f. living in an area of the state or part of a category of individuals within an area of the state deemed exempt from this requirement by the Secretary of the Department of Agriculture.
3. To meet the work, work program or workfare requirement, an individual must:
- a. work 20 hours or more per week in unsubsidized employment, averaged monthly;
 - b. participate in and comply with the requirements of a work program. . .20 hours or more per week as determined by the state agency; or
 - c. participate in and comply with a workfare program operated by the state as described in Section 20 of the Food Stamp Act of 1977 or a comparable program established by the state or a political subdivision of the state.

. . .

5. An individual who is denied eligibility under paragraph 1 above may regain eligibility for food stamps if, during a 30-day period, the individual:

works 80 hours or more; or

participates in and complies with the requirements of a work program for 80 or more hours, as determined by a state agency; or

participates in and complies with a workfare program under section 20 of the Food Stamp Act of 1977 or a comparable program established by a state or a political subdivision of a state.

An individual who regains eligibility as indicated above, shall remain eligible as

long as the individual meets the requirements in paragraph 1.

. . .

F.S.M. 273.7(q)

The petitioner does not argue that she meets any of the exemption requirements in paragraph 2 above, nor does she argue that she has received Food Stamps in fewer than 3 of the last 36 months without meeting the work requirements. She does argue that she should be found eligible for Food Stamps because she met the requirements in paragraph 3 above, namely that she was working for 20 hours or more per week in unsubsidized employment, averaged monthly, at or near the time of her application for Food Stamps.

Although the petitioner claims that she worked the kinds of hours described in paragraph 3A within thirty days of her application, she has not presented any proof of this claim in the ten months which have followed, despite repeated requests to do so. Her failure to verify a piece of information which should have been imminently easy to verify³ justifies a conclusion that she did not work the hours claimed.

Since the petitioner was denied eligibility under paragraph 1 above, she can only regain eligibility if she follows the mandates of paragraph 5 above.⁴ Thus, the

³ The petitioner never adequately explained how she could get a copy of her W-2 from her employer but not her weekly pay breakdown.

⁴ The regulation at 273.7g regarding failure of general recipients (not just adults with no dependents) to comply with work requirements when required to do so also provides that a sanction for failure to comply can only be removed for

Department was correct on imposing a requirement on the petitioner that she participate in and complete a work program of 80 hours or more during a thirty-day period before she can receive Food Stamps again.

As the Department's decision is in accord with its regulations, the decision to deny Food Stamps on July 2, 1998 until the petitioner completed the work program requirement was correct and the Board must uphold it. 3
V.S.A. § 3091(d), Fair Hearing Rule 17.

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a first violation at the later of the date the individual complies with the work requirements or the date that is one month after the date the individual became ineligible. The petitioner could have been denied under this provision until she performed the acts which she had failed to perform according to the January 7, 1998 sanction notice. It appears in this case, however, that the fact that the petitioner had been sanctioned was not so much the reason for her denial (although it clearly could have occurred under this sanction provision) as the petitioner's failure to meet the special eligibility requirements for able-bodied adults without dependents. The latter are the regulations relied upon by the Department to uphold this decision.